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MAR 22 2005

OFFICE OF PETITIONS

In re Application of	:	
Mark Dinsmore	:	ON PETITION
Application No. 10/790,635	:	AND
Filed: March 1, 2004	:	NOTICE OF ABANDONMENT
Attorney Docket No. 56249(PHLL-155RE)	:	

This is in response to the petition under 37 CFR 1.47(b), filed November 8, 2004 (certificate of mailing dated November 4, 2004).

A review of the file reveals that on May 4, 2004, the United States Patent and Trademark Office (Office) mailed a Notice to File Missing Parts of Reissue Application to petitioner, which set forth a two-month period to submit the required payment of a \$130.00 surcharge, an executed oath or declaration in compliance with 37 CFR 1.63, a statement of consent bearing the signature of an official authorized to act on behalf of the assignee, and a signed assignee's statement under 37 CFR 3.73(b). Extensions of time to reply to the Notice were permissible.

On November 8, 2004 (certificate of mailing dated November 4, 2004), petitioner filed an extension of time to reply within the fourth month, a petition under 37 CFR 1.47(b), a declaration, and paid the requisite fees. However, the Office did not receive a statement of consent bearing the signature of an official authorized to act on behalf of the assignee or a signed assignee's statement under 37 CFR 3.73(b) as required by the Notice of May 4, 2004.

Because petitioner failed to submit a timely and proper response to the Notice of May 4, 2004, within the time period stated, **this application is currently abandoned as of November 5, 2004.**

Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and pay the proper petition fee within **TWO (2) MONTHS** of this decision before the petition under 37 CFR 1.47(b) may be addressed on its merits. No extensions of time are permissible. Accordingly, the petition is dismissed without prejudice. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice, a petition under 37 CFR 1.137(b) is suggested. The petition under 37 CFR 1.47(b) will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

The Office reminds petitioner that a grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and, (6) proof of irreparable damage. Petitioner is further reminded of Section 409.03(b)(A) of the Manual for Patent Examining Procedure, which states in pertinent part:

Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP Section 324. An inventor may not authorize another individual to act as his or her agent to sign the application oath or declaration on his or her behalf. *Staeger v. Commissioner*, 189 USPQ 272 (D.D.C. 1976), *In re Striker*, 182 USPQ 507 (Comm'r Pat. 1973). Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

Petitioner may supplement the petition under 37 CFR 1.47(b) as desired.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Senior Petitions Attorney Christina Tartera Donnell:

By mail: Mail Stop Petition
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 P.O. Box 1450
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Telephone inquiries should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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